

Eugene J. Wait, Jr.
Nevada Bar #1794
WAIT LAW FIRM
305 W. Moana Lane, Second Floor
Reno, Nevada 89509
Telephone: (775) 827-5500
Facsimile: (775) 827-6663
ewait@waitlaw.com

Attorneys for Defendant/Counterclaimant/
Third-Party Plaintiff
PANELIZED STRUCTURES, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LIBERTY MUTUAL INSURANCE
GROUP,

No. 2:10-cv-01951-JCM-PAL

Plaintiff,

v.

PANELIZED STRUCTURES, INC.,
et al.,

Defendants.

AND RELATED COUNTERCLAIMS

PANELIZED STRUCTURES, INC.,

Third-Party Plaintiff,

v.

ARIZONA LABOR FORCE, INC., An
Arizona corporation, dba
ALLIED FORCES TEMPORARY
SERVICES,

Third-Party Defendant.

REQUEST FOR PRETRIAL CONFERENCE
(LR 16-2)

Defendant/Counterclaimant/Third-Party Plaintiff PANELIZED
STRUCTURES, INC., ("PSI"), pursuant to LR 16-2, requests the
Court to conduct a pretrial conference in this action to

1 expedite disposition of this case, on the ground the case is
2 complex and is one in which there has been delay, as more fully
3 set out below.

4 I. Procedural History

5 This action is related to a subrogation action Plaintiff
6 LIBERTY MUTUAL INSURANCE GROUP commenced in the Clark County
7 state court on February 22, 2006, as action number A521975,
8 against PSI and its employee, Floyd Nielsen. Action number
9 A521975 is still pending in the Clark County District Court.

10 This subrogation action was commenced by Plaintiff LIBERTY
11 MUTUAL INSURANCE GROUP in Clark County state court on August 30,
12 2010, as action number A624272. The state court action was
13 removed to this Court based on the diversity of citizenship of
14 Plaintiff LIBERTY MUTUAL, with principal place of business in
15 Boston Massachusetts, and PSI, with principal place of business
16 in Modesto, California. The Complaint seeks recovery in excess
17 of \$500,000, which meets the jurisdictional limitation for
18 removal jurisdiction. The Complaint refers to LIBERTY MUTUAL's
19 insurance contract and a Customer Agreement between PSI and
20 ARIZONA LABOR FORCE, INC. ("ALFI"). Plaintiff LIBERTY MUTUAL
21 moved to remand the action to state court based on 28 U.S.C.
22 1445(c). This Court denied the Motion.

23 PSI answered the Complaint and asserted a Counterclaim
24 against LIBERTY MUTUAL seeking damages for breach of an implied
25 covenant of good faith and fair dealing in LIBERTY MUTUAL's
26 insurance contract issued to ALFI. LIBERTY MUTUAL moved to
27 dismiss the Counterclaim. This Court denied the motion.
28

1 On March 25, 2011, the Court entered its Scheduling Order
2 establishing discovery deadlines. Third-Party Defendant ALFI
3 had not yet appeared in the action. Third-Party Defendant ALFI
4 moved to dismiss the first and second claims for relief in PSI's
5 Third-Party Complaint. This Court granted the motion.

6 PSI moved to amend its Counterclaim against LIBERTY MUTUAL
7 to add additional entities related to LIBERTY MUTUAL, including
8 "LM Insurance Corporation", which issued LIBERTY's insurance
9 policy to ALFI and "Liberty Mutual Insurance Company," which
10 supervises subrogation actions for LIBERTY MUTUAL. LIBERTY
11 opposed the Motion to Amend. This Motion has been fully brief
12 for decision.

13 On August 16, 2011, the Court vacated its Order dismissing
14 the first and second claims for relief in PSI's Third-Party
15 Complaint and entered an Order denying ALFI's Motion to Dismiss
16 these claims. The Court also denied ALFI's Motion to Dismiss
17 the third claim for relief. Counsel for ALFI and PSI agreed to
18 postpone ALFI's appearance to the Third-Party Complaint until
19 the Court's ruling on PSI's Motion to Amend its Counterclaim and
20 the actual filing of an Amended Answer, Counterclaim and Third-
21 Party Complaint.

22 In response to the Court's August 16, 2011 ruling
23 reinstating claims in PSI's Third-Party Complaint, PSI submitted
24 an Amended Proposed Answer, Counterclaim and Third-Party
25 Complaint to clarify PSI's damage claims in its Counterclaim.
26 LIBERTY moved to strike the amended proposed pleading on the
27 ground it was not supported by PSI's Motion to Amend. This
28 Motion has not been fully briefed for ruling.

1 The parties conducted an FRCP 26(f) meeting in this action
2 on August 30, 2011. The parties discussed discovery and were
3 unable to resolve the discovery disputes which developed. The
4 parties submitted a proposed Amended Scheduling Order,
5 requesting additional discovery and related deadlines. The
6 proposed Amended Scheduling Order was rejected by the Court.

7 On August 31, 2011, PSI noticed the deposition of Plaintiff
8 LIBERTY MUTUAL, pursuant to FRCP 30(b)(6), on 13 days notice, on
9 September 13, 2011. On September 7, 2011, Plaintiff LIBERTY
10 MUTUAL moved for a protective order to preclude the Rule
11 30(b)(6) deposition. The deposition went forward on September
12 13, 2011, with all counsel attending. Witness Cindy Riggio
13 testified that she had no corporate information responsive to
14 the subjects identified in the Notice. At the deposition,
15 counsel for LIBERTY delivered a courtesy copy of LIBERTY's
16 Answers to Interrogatories, which identified Kim DeConing,
17 Senior Technical Claims Specialist, Liberty Mutual Insurance
18 Company, Commercial Market Central Recovery Unit, Weston,
19 Massachusetts, as the person who authorized the continued
20 prosecution of LIBERTY MUTUAL's subrogation claim against PSI in
21 Clark County District Court Case No. 517829.

22 The Magistrate Judge has scheduled a hearing on LIBERTY
23 MUTUAL's Motion for Protective Order dated September 8, 2011, on
24 Monday, September 26, 2011, at 10:00 a.m.

25 //

26 //

27 //

28 //

1 II. Grounds for Request

2 FRCP 16(a)(1)(5) expresses the purposes for a Rule 16
3 pretrial conference. Counsel for PSI represents to the Court a
4 firm conviction that this case requires a Rule 16 pretrial
5 conference on an urgent basis.

6 Respectfully submitted.

7 Dated: September 19, 2011.

8 WAIT LAW FIRM

9
10 By: Eugene J. Waitt, Jr.
11 Eugene J. Waitt, Jr.
Nevada Bar #1794

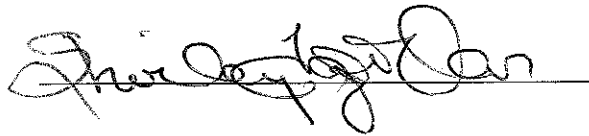
12 Attorneys for Defendant/
13 Counterclaimant/
14 Third-Party Plaintiff
15 PANELIZED STRUCTURES, INC.
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of WAIT LAW FIRM, and that on September 19, 2011, pursuant to Section IV of District of Nevada Electronic Filing Procedures, I deposited for mailing and sent via U.S. District Court CM/ECF Filing, a true copy of the attached document addressed to:

Elizabeth J. Foley, Esq.
Elizabeth Foley, Lawyer, Ltd.
Attorneys at Law
601 S. Rancho Drive, Suite A-1
Las Vegas, Nevada 89106-4898

D. Chris Albright, Esq.
William H. Stoddard, Jr., Esq.
Albright, Stoddard, Warnick & Albright
Attorneys at Law
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

A handwritten signature in black ink, appearing to read "D. Chris Albright", is written over a horizontal line.

WAIT LAW FIRM

Attorneys At Law

305 W. Moana Lane, Second Floor, Reno, Nevada 89509
Tel: (775) 827-5500 Fax (775) 827-6663